IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

C.M.A.No.2959 of 2007

Maheswari .. Appellant/Respondent

versus

K.Manoharan .. Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act against the judgment and decree dated 24.9.2007 made in F.C.O.P.No.1156 of 2005 on the file of the Principal Judge, Family Court, Chennai.

For appellant : Ms.K.Damayanthi
For respondent : Mr.R.Shanmugam

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

This Civil Miscellaneous Appeal is by the respondent wife against the order of the Principal Judge, Family Court, Chennai, granting a decree for divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

2. The respondent husband filed a petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955, seeking dissolution of the marriage on the ground of cruelty and the attempts made to bring about a settlement and to restore matrimonial peace and bring about re-union yielded no fruitful result.

3. The allegations therein were denied by the appellant herein. She also filed a petition for maintenance in M.C.No.164 of 2005 seeking maintenance at Rs.5,000/- per month from the respondent herein from the date of the petition. By a common order dated 24th September 2007, while granting a decree of dissolution of marriage by divorce, the Family Court directed the respondent herein to pay a sum of Rs.2,000/- per month as maintenance to the appellant herein from 30.3.2005.

4. Aggrieved of the said order, the wife has come on appeal questioning the correctness of the findings of the Family Court.

https://hcservices.ecourts.gov.in/hcservices/

5. Learned counsel appearing for the appellant, taking us through the evidence and the documents marked, pointed out that

the Court below erred in holding that the respondent husband had proved desertion and cruelty by the appellant. Learned counsel further pointed out that the appellant suffered miscarriage on more than two occasions, only due to the mental and physical torture caused by the respondent herein. She further pointed out that the respondent suffered from abdominal tuberclosis and that the appellant suffered miscarriage only on this ground. The allegations against the appellant were totally false and that the appellant was driven out of the matrimonial home by the cruel behaviour of the respondent. She pointed out that the desertion was only by the respondent and not by the appellant wife. The appellant also alleged that the respondent had an illicit relationship with one Manjula and that the Court below erred in ignoring the evidence of her parents and brothers. She pointed out that the petition for divorce was only on account of his intention to marry the said Manjula.

6. Learned counsel appearing for the appellant impressed on the fact that the appellant stood by the respondent when he underwent treatment and had spent her earnings for his treatment.

7. Learned counsel appearing for the respondent, however, relied on the findings of the Court below in support of his cause for divorce.

8. Considering the allegations herein, in order to strike an amicable settlement and to re-unite the parties, this Court directed the parties to appear before this Court to ascertain the desire of both the parties to restore matrimonial peace. Although the appellant expressed her eagerness to continue her matrimonial relationship with the respondent, the respondent expressed his inability to join back his wife. However, after hearing the parties for some time, this Court granted time on 10.12.2007 for the parties to think about the pros and cons of their case and to come back with an amicable settlement for re-union. The matter was directed to be posted on 17.12.2007. However, even today the respondent expressed his inability to continue his matrimonial relationship with the appellant and prayed for divorce. Considering the persistent attitude of the parties herein in not sorting out the differences and re-unite, there being no purpose of continuing this relationship with a gap between the parties and not capable of bridging, the appeal was taken up for hearing on merits.

WEB COPY

9. Heard the counsel for both sides.

10. It is seen that the marriage between the appellant and the respondent took place on 16.2.1997 in accordance with the Hindu rites and customs. The parties herein were living with the respondent's family members at Chennai. It is stated that from the beginning of the matrimonial life, the respondent was kept at a distance by the appellant. It is further seen that the appellant had Tuberclosis in the intestine. It is the case of the respondent herein that despite his ill-health, the appellant herein forced the respondent to have relationship with her. It

https://hcservices.ecourts.gov.in/hcservices/

is also seen that in the first delivery, the child was a still born child. The appellant is doing her M.Phil.

11. The appellant herein placed reliance on the letters written by the respondent in Exs.P4 to P8 to prove that the matrimonial relationship between the parties was an amiable one and that the allegations as regards cruelty were totally unsustainable. The respondent, however, in his cross-examination, replied that they were written at the initial stage of the marriage. The Family Court Judge found that the appellant left the matrimonial home on 15.1.2005 with all her belongings when the respondent husband was away from the matrimonial home. The Court below pointed out that the appellant did not adduce sufficient evidence to show that she had taken steps for re-union. As to the allegations on illicit relationship of the respondent with one Manjula, the Court below pointed out that as per the evidence of the appellant, to sort out the issue, ten times panchayats were held. However, they did not yield the desired result. It was also stated that the said Manjula was working in P.W.2 Ravikumar's company. The Court below pointed out that except the close relatives of the appellant, no other panchayatdars were examined to prove the contention as against the respondent in the panchayat that he wanted to marry the said Manjula. The Court below further pointed out that the witnesses P.Ws.4 and 6 pointed out that they did not know who Manjula was, and going by the evidence of P.W.4 and P.W.6, the Court below held that the appellant had failed to prove that her husband had illicit relationship with the said Manjula. The Court below pointed out that the respondent had not denied the fact that he was suffering from Tuberclosis and had his treatment and that the wife had suffered miscarriage more than twice. Going by the evidence, the Court below came to the conclusion that the allegation of illicit relationship of the husband with one Manjula amounted to mental cruelty and hence, the respondent had proved that the appellant had subjected the respondent to mental cruelty and hence granted the prayer for divorce.

12. A perusal of the evidence of the parties herein and the views expressed before this Court show that the allegations of illicit relationship had created a big gap in the relationship of the parties and that the respondent expressed his inability to reconcile and join back the appellant wife. As already seen, the appellant left the matrimonial home on 15.1.2005 when the respondent was away from the matrimonial home and that the appellant left the matrimonial home taking away all her things. Considering the efforts taken by this Court to arrive at a consensus and to settle the differences proving futile, and the nature of allegations made and the finding of the Court below, we do not find any justifiable ground to allow this appeal.

13. In this connection, in matters relating to matrimonial disharmony leading to filing of divorce petition where the parties have been living separately for a long number of years with no possibility of reunion, indicating the marriage irretrievably broken, the decision of the Supreme Court reported

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

in (2006) 4 SCC 558 (NAVEEN KOHLI Vs. NEELU KOHLI) and (2007) 4 SCC 511 (SAMAR GHOSH Vs. JAYA GHOSH) need to be noted.

14. In the decision reported in (2006) 4 SCC 558 (NAVEEN KOHLI Vs. NEELU KOHLI), where both the spouses had been living separately for a fairly long number of years and could not reconcile themselves to live together forgetting their past, the Apex Court confirmed the order of the Family Court to grant the decree of divorce. Though irretrievable marriage is not a ground for dissolution of marriage under the Hindu Marriage Act, 1955, the Apex Court held that if after an endeavour to reconcile the parties, the breakdown is irreparable, then divorce should not be withheld. It further held that it would be unrealistic for the law not to take notice of that fact and it would be harmful to society and injurious to the interest of the parties. Where there being a long period of continuous separation, it may fairly be surmised that the irretrievable bond is beyond repair. Marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie, the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of parties. Taking note of the fact that the parties had been living separately for more than ten years and the number of proceedings initiated by one party to the other, the Apex Court found that the marriage between the parties was only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.

15. The Apex Court once again, in the decision reported in (2007) 4 SCC 511 (SAMAR GHOSH Vs. JAYA GHOSH), had an occasion to consider a similar situation. Referring to various case laws on the subject including (2006) 4 SCC 558 (NAVEEN KOHLI Vs. NEELU KOHLI) the Supreme Court held that "under the breakdown theory, divorce should be seen as a solution and an escape route out of a difficult situation. Such divorce is unconcerned with the wrongs of the past, but is concerned with bringing the parties and the children to terms with the new situation and developments by working out the most satisfactory basis upon which they may regulate their relationship in the changed circumstances."

16. As to the various instances of mental cruelty, the Apex Court further observed that there can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. Yet, the Apex Court, by way of illustration, listed out the instances of mental cruelty as follows:

> "(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical

https://hcservices.ecourts.gov.in/hcservices/

reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty. "

17. Taking note of all these circumstances in the aforesaid case and the fact that the parties were admittedly living separately for more than 16½ years, the Apex Court felt that the irresistible conclusion would be that the matrimonial tie had ruptured beyond repair and hence, confirmed the order of the Family Court and granted divorce. Applying the said decision of the Apex Court to the facts of the case herein on the admitted fact that the parties have been living separate eversince 2005 and attempts made by the Court had further failed, we do agree with the view of the Family Court that the marriage had irretrievably broken beyond repair and that there is no possibility of bringing the couple together. Taking note of the circumstances herein and the irreconcilable differences between the parties, we do not find any ground or justification to disturb the order of the Court below. In these circumstances, we dismiss the appeal, thereby confirm the order of the Family Court passing a decree of divorce and dissolution of the marriage held on 16.2.1997.

The appeal stands dismissed. No costs. Connected M.P.No.2 of 2007 is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ksv

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

To:

The Principal Judge, Family Court, Chennai.

one cc to Ms.K.Damayanthi, advocate SR.No.74825

one cc to Mr.Arivunithi, advocate SR.No.74658

C.M.A.No.2959 of 2007

sky/21/1

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/